

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT GRANT, *Master Sergeant*,

Plaintiff,

-against-

1:06-CV-1029
(LEK/RFT)

NEW YORK AIR NATIONAL GUARD,

Defendant.

DECISION AND ORDER

Plaintiff Robert Grant (“Plaintiff”) brought suit against Defendant New York Air National Guard (“Defendant”) in New York State Supreme Court, Albany County. See Dkt. No. 1. In a Notice filed August 25, 2006, the matter was removed by Defendant from State court to this Court. See id. Defendant then filed a Motion to dismiss, which is currently pending before this Court. See Deft’s Motion (Dkt. No. 4). Plaintiff opposes both the removal of this action from State to Federal court and Defendant’s Motion to dismiss, and has filed papers to that end. See Plntf’s Response (Dkt. No. 6).

Defendant, in turn, filed a Reply to Plaintiff’s Response. See Deft’s Reply (Dkt. No. 9). However, in said Reply, Defendant has stated that it no longer wishes to have this action heard in Federal court. Id. According to Defendant’s Reply, “[u]pon consideration of plaintiff’s opposition papers, defendant has consented to have the case returned to state court”, and Defendant now requests that the matter be returned to State court. Id. Defendant carbon-copied Plaintiff’s counsel on the Reply. Id.

After due consideration of the submissions of the parties, and considering both Plaintiff’s

opposition to removal from State court and Defendant's consent to, and request for, return of this matter to State court, this Court vacates the removal and returns the matter to the State court.

Defendant's pending Motion to dismiss is now moot, and is denied as such.

Therefore, based on the foregoing discussion, it is hereby

ORDERED, that the Removal of this matter from New York State Supreme Court, Albany County, to this Court is **VACATED**, and this matter is **RETURNED** to the State Court forthwith; and it is further

ORDERED, that Defendant's Motion to dismiss (Dkt. No. 4) is **DENIED AS MOOT**; and it is further

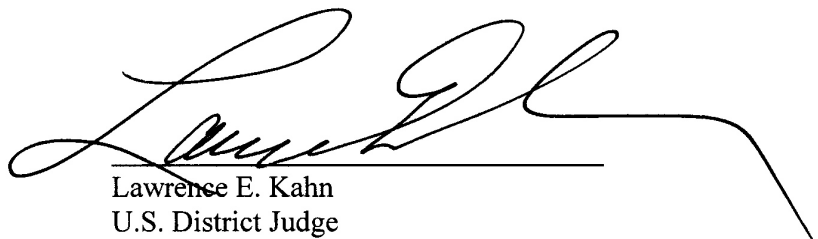
ORDERED, that the Clerk of this Court forward a copy of this Order and the Record in this matter to the Clerk of the State court; and it is further

ORDERED, that the Clerk of this Court **CLOSE** this case; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: December 07, 2006
Albany, New York



Lawrence E. Kahn
U.S. District Judge